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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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LAUREN PITTS,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION, a  
foreign corporation; DOES I-X, and ROE  
ENTITIES I-X, inclusive,

Defendants.

Case No. 2:17-cv-01248-APG-CWH

**ORDER REGARDING OBJECTIONS TO  
REMOVAL**

Defendant Costco removed this case to federal court on May 3, 2017 based upon diversity jurisdiction. The removing party has the burden of proving that removal is proper, and that this court may properly assert jurisdiction over the parties and dispute. In its Notice of Removal, Costco states that the plaintiff commenced this action in state court on February 9, 2016. ECF No. 1 at 1:23-26. "A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action." 28 U.S.C. § 1446(c)(1).

"A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a)." 28 U.S.C. § 1447(c). Thus, if the plaintiff wishes to seek to have this case remanded to state court based upon an untimely removal, she must file a motion within 30 days of Costco's removal. The failure to file a timely motion to remand constitutes a waiver of any procedural defects. *Smith v. Mylan Inc.*, 761 F.3d 1042, 1045 (9th Cir. 2014) ("[T]he one-year time limitation for removal of diversity cases is a procedural, non jurisdictional (sic) requirement rather than jurisdictional. Because procedural defects are waivable, a district court lacks authority to remand

1 based on the defendant's violation of § 1446(b)'s one year-time limitation absent a timely filed  
2 motion to remand.").

3 **IT IS THEREFORE ORDERED** that if the plaintiff wishes to challenge removal based  
4 on procedural defects, she must file an appropriate motion within 30 days of Costco's removal.

5 Dated: May 9, 2017.



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7 ANDREW P. GORDON  
8 UNITED STATES DISTRICT JUDGE  
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